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Global Trade Practice  
Environmental Practice**US Joins March 31 Talks for New Multilateral Climate Treaty**

For the first time since the Kyoto Protocol was negotiated and adopted in the 1990s, the United States will be an active participant with other industrialized nations, together with developing countries such as China, India and Brazil, in talks to implement the "Bali Action Plan" for a new climate accord. The negotiations, scheduled to start on March 31, 2008, should be of particular interest for US businesses, as a significant aim of this session, and the subsequent near-term sessions over the next 20 months, is to reach international agreement on a long-term goal of emissions reductions and mitigation actions meant to curb emissions (primarily carbon dioxide (CO<sub>2</sub>)) from industrial, transportation, commercial, utility, and other sources of the pollutant.

Nearly 200 delegates to the 13th United Nations Climate Change Conference in Bali, Indonesia, last December agreed to a two-track process of debate and negotiation aimed at adoption of decisions for the global mitigation and adaptation of greenhouse gas emissions by the December 2009 conference in Copenhagen, Denmark. Pursuant to the Bali decision, the dual process—one under the 1992 Climate Change Framework Convention itself and a second under the Convention's 2005 Kyoto Protocol—formally begins with the first of four sessions this year being held at a UN Conference Center in Bangkok, Thailand, during the week of March 31.

Each of the Bali tracks have their own Ad Hoc Working Group:

- The "Ad Hoc Working Group of Protocol Parties," which will not include the United States, is a continuation of the Protocol's Article 3.9 negotiations that began in Montreal in 2005 for the post-2012 commitment period. It will include a workshop on means for the industrialized countries to achieve emission targets, including emissions by sector, in such countries only.
- The "Ad Hoc Working Group on Long-Term Cooperative Action under the Convention," a new group that includes the United States as a negotiating Party, as well as the developing countries. The Bali decision specifies that these negotiations cover four specific "building blocks" of "mitigation, adaptation, technology, and finance," with the latter two intended to "support and enable" mitigation and adaptation. This first session will include development of a "work programme" for the negotiations.

Any decision growing out of either of these processes for an amendment to the Convention, a new protocol, or other legal instrument can only be adopted by consensus of the negotiating Parties.

A preview of the difficulties that are likely to surface at Bangkok, and future sessions, regarding the second working group's negotiations is apparent from the "views" submitted to the Convention's secretariat in February by 26 Parties on the "means to achieve mitigation objectives." For example, Slovenia, on behalf of the European Union, said that industrialized countries "need to continue to take the lead in reducing" global emissions with "commitments in the range of 25 to 40 percent below 1990 levels by 2020." As to

developing countries, the EU also noted a "need" to move from "business as usual" emissions "in several developing regions." China, a large emitter of CO<sub>2</sub>, observed that the "two-track" negotiation processes "show that the Convention and the Kyoto Protocol are the foundation of addressing climate change by the international community in the future." China added that one of the "key elements" of the second Ad Hoc Group's work programme is "emission reduction targets" for the industrialized countries "that are not" Kyoto Protocol Parties. That can only mean the United States.

In its "views," the United States "supported" the identification of a "long-term" and "realistic" global "goal" for emission reductions that takes into account "science and likely technology development," and "the inclusion of sectoral approaches." It "underscores that any future arrangement must reflect the desires of developing countries and indeed all countries to grow their economy, develop a sustainable basis, and have access to secure energy resources."

As to the sectors reference, the Bali Plan, among other things, asserts that mitigation action includes "consideration" of "sectoral approaches and sector-specific actions, in order to implement" Article 4 of the Convention. That Article calls on all Convention Parties to develop and apply technologies, practices, and processes in "all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors," which is very inclusive from the standpoint of the business community generally.

These sessions are significant, as any agreement resulting from them that includes both mitigation actions for the United States and other industrialized nations and also engages developing countries, such as China, India, and Brazil, into emissions cutting actions, will likely provide for economic growth by all countries, developed and developing. Such a result would be beneficial for the environment and business. However, to achieve such an optimistic outcome will require business vigilance during the entire process.

The next sessions of the Ad Hoc Groups will be held in Bonn, Germany, from June 2 to 13, in conjunction with other Convention and Protocol meetings. The date and venue for the third session has yet to be determined. The fourth session will be in Poznan, Poland, in December. David B. Finnegan of Washington's Mayer Brown Global Trade practice will attend the Bangkok session.

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